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Watch Your Language

by Karen J. Izzo

In my more than 20+ years of experience providing insurance services for security contractors, I continue to be impressed with their technical expertise and professionalism when installing security systems. When it comes to insurance matters and contracts, however, most contractors need to enlist the services of qualified legal representation to review their agreements. A well-written business contract can limit a business' liability exposure and improve a company's chances for continued insurability in the future.

When a security systems contractor puts itself on the line with a potentially unlimited liability exposure in a business contract, alarm company management very often doesn't have a legal representative review the agreement they're signing. If they do have an attorney look at it, the legal representative may not be familiar with the specific issues and perils that pertain to the security industry.

Even if the alarm company owner does have a good contract written by a qualified attorney, the owner may not understand the language's intent and alter it because of pressure from a client. This action could also jeopardize coverage.

These are just some of the reasons why I encourage all security contractors to sit down with an attorney who understands the security industry, create a standard contract and then use that contract each and every time they deal with a client. An attorney should review the alarm company's contracts to be certain all have an *exculpatory clause, liquidated damages* or *limitation of liability clause* and a *third-party indemnification clause*. For the most part, the courts have upheld these provisions when they are included.

An Alarm Company Is Not an Insurer

An exculpatory clause states that the security contractor is not an insurance company. This paragraph puts the end user on notice that he or she must still purchase coverage for protection of personal contents. Believe it or not, there have been circumstances where homeowners have actually cancelled coverage because they think; "I have an alarm, so now I don't need insurance."

A third-party indemnification clause is another important provision that should be in all contracts. This clause enables an alarm company to be indemnified by the property owner should a third party, who is not a party to the contract, sue the security contractor. This is particularly useful if the end user/owner has tenants who have lease agreements. The end user might own an office campus with several other buildings on it, or the property could be a shopping mall with several leased store fronts.

The third-party indemnification clause exists because the security contractor does not have or want the opportunity to have contracts signed by all of these tenants whose property is being protected.

The property owner usually has signed lease agreements with tenants that say the owner is not responsible for tenant contents. As a result, the owner can be

indemnified by the contracts with his or her tenants. The owner, in turn, can provide indemnification to the alarm company.

Clients Often Misunderstand Intent

A liquidated damages or limitation of liability clause is the third basic clause that should be included. It limits an alarm company's liability for errors and omissions. The damages are usually capped at $250 or six months of monitoring fees, even if the alarm company may have some form of negligence, such as the central station not calling the police fast enough or the phone lines being down. Since the security contractor is only supposed to notify the appropriate authorities that an event is occurring, it is not liable for damages caused by the actual event. The alarm company did not cause the fire or burglary and is not supposed to stop the event from taking place.

One question often asked by customers regarding liquidated damages is, "While the alarm company is on my property installing the alarm, shouldn't it be held accountable if it causes property damage or bodily injury?" The answer is yes. It is not the insurer's intent to limit the liability of the alarm company while it is working on a client's property. The alarm company has the same exposure as any other contractor and there is no limitation of liability.

Instead, the liquidated damages clause covers the gray areas of operations, errors and omissions after the dealer has left the premises. Unfortunately, both end users and alarm companies don't understand the intent of this language, which then leads them to make ill-advised alterations.

Reference All Terms and Conditions

Something as simple as the placement of terms and conditions on a contract is another basic, yet important issue. Sometimes alarm companies will have this language on the reverse side of their contracts. If the front of the contract does not reference the terms and conditions on the back, the conditions may be void.

Another important factor to remember is the protections given by contracts should not be for a specific period of time. If the alarm agreement is for a period of one, three or five years, it must be worded in such a way that the contract will still be in effect after that time period, for as long as alarm protection is provided. Otherwise, when there is a loss after the specified period of time, the subscriber can claim the contract has expired, despite the fact that the alarm company is still providing service.

In a perfect world, all alarm company contracts would contain these provisions and both insurance companies and dealers could sleep a little better at night. In the real world, however, security systems contractors may feel pressured by customers to make revisions. I urge all dealers to always use the same language in contracts. Otherwise, they could jeopardize their coverage.

Always Use a Standardized Contract

When shopping for insurance, the alarm company submits an application to the insurer as a prerequisite to obtaining coverage. The application asks specific questions about the alarm company, including whether or not its standard contract is used in all alarm operations. If the information on the application is incorrect, it may be considered fraudulent and coverage may be void.

Very often, alarm company officials forget they signed these applications and that coverage was extended based on their disclosures. Even attorneys can forget to ask their clients about what was stated on the insurance application.

This is why I cannot stress enough the importance of having a qualified attorney review alarm company contracts. His or her input may, in the long run, save the security contractor's business and keep it insurable. But if a customer is pushing hard for a revision, perhaps the security contractor should think twice about accepting the job.

Is the profit from a given project worth the liability exposure? Only the alarm contractor, with help from a qualified attorney, can answer that question.